IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2914 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VAJUBHAI BHURABHAI VAGHELA - BHANGIVAS KHODIYAR POTARY

Versus

G E B, SECRETARY, VIDHYUT BHAVAN

Appearance:

1. Special Civil Application No. 2914 of 2000

MS SADHANA SAGAR for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR SP HASURKAR for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/03/2004

ORAL JUDGEMENT

The grievance of the petitioner is that though he has been working on the part timer basis, his service has not been regularized till date.

1.1. The petitioner was appointed as part time sweeper on 1st January, 1993. He was required to work for two hours in a day. At that time, he was paid fixed salary of Rs.100=00 per month. On 31st December, 1998, he was appointed as regular part time sweeper. Today, it is stated by Ms. Sadhna Sagar learned advocate appearing for the petitioner that even today, he is working on the said post. The petitioner in light of the Circular dated 26th December, 1980 made request to the respondents to regularize his service. However, that was not done. He ultimately approached this Court by filing Special Civil Application No. 3543 of 1999. However, his request was not accepted. He, therefore, approached this Court by filing Special Civil Application No. 4305 of 1999. The said petition was disposed of by learned Single Judge of this Court (Coram : S.K. Keshote, J.) vide order dated 8th September, 1999. In view of the said order, the petitioner was required to make representation and that was made on 16th September, 1999. The respondent however, did not accept the request and rejected his demand for regularization of service. He, therefore, approached this Court by filing Misc. Civil Application no. 451 of 2000 for revival of the said petition which was duly granted by this Court by order dated 13th March, 2000. The learned Single Judge, however, granted permission to file fresh petition. That is how the present petition is filed.

2. As against that, no affidavit has been filed by the other side and the averments made in the petition remain uncontroverted.

3. The question regarding regularization of service on temporary or part time employee who has put in number of years of service has been considered and decided by this Court on 17th February, 2004 in Special Civil Application No. 10518 of 1998, which was filed against the present respondent - Board. In view of the said judgment, the present petition is required to be allowed since the issue involved in it stands squarely covered by the decision in the aforesaid matters and it is hereby ordered to be allowed with the following directions :-

The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of petitioner for appointment on permanent post in Class-IV and if the permanent posts are found vacant, the petitioner shall be appointed on the same in accordance with his claim, in the matter of seniority and the Regulations and if

otherwise, he is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise to be carried out as early as possible but in any case not later than 30th May, 2004. If need be, the petitioner can make appropriate representation, which will be considered in light of this judgment and in particular, the direction given therein.

The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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